

REMARKS

The Official Action of 2 June 2005 has been carefully considered and reconsideration of the application as amended is respectfully requested.

The courtesy of Examiner Nina Bhat in discussing this case with the undersigned in a telephone interview on 21 November 2005 is acknowledged with appreciation. The Interview Summary of 22 November 2005 accurately reflects what was discussed, as amplified below.

The claims have now been amended as courteously suggested by the Examiner to have the preamble more specifically recite the function of the claimed device and to add further means plus function recitations to provide additional structural support and cooperation between the recited elements. The means plus function recitations by statute cover the corresponding structure described in the specification and equivalents thereof (35 USC 112, sixth paragraph). Support for the amendments to the preamble appear in the specification as filed at, for example, page 1, second paragraph. Support for the recited "evaporation surface means" appears in the specification as filed at, for example, page 2, lines 1-15.

Claims 2 and 4 have been amended to remove the bases for the rejections under 35 USC 112, second paragraph appearing at paragraph 3 of the Official Action, and dependent claims have been amended to take into consideration the amendments to claim 1. New claim 37-39 have been added more completely to define the subject matter which Applicants regard

as their invention. All claims as amended are respectfully believed (a) to be sufficiently definite to satisfy the provisions of 35 USC 112, second paragraph, and (b) to be supported by the specification under the provisions of 35 USC 112, first paragraph, as next discussed.

In paragraph 2 of the Office Action, the Examiner raises the objection that the claims are unduly broad. Specifically, she posits that anything which floats on the surface of water and has an interior surface which can retain water, for example, if it rains, would read on the claims. The Examiner further notes that wind, current or tethering a boat to a dock would constitute an orienting means.

Applicants respectfully submit that the amendments to the claims remove the basis for this rejection. Claim 1 is specifically directed to an evaporation device which increases the “total of evaporation area of said surface of the body of liquid”. An object which can float and at the same time hold rain water, while it may comprise an evaporation surface (though Applicants do not agree that it would), does not increase the total evaporation area of the body of liquid in which it floats. To the contrary, a boat *decreases* the overall evaporation area of the body of water in which it floats, even accounting for the fact that the sides of the boat may get wet from the body of water.

Applicants respectfully point out that the orientation means defined in Claim 1 is specifically directed to one which orients “said evaporation surface in a direction at least approximately parallel to the wind direction”. The wind is obviously not sufficient to orient a

device parallel to itself (i.e., to the wind), nor is it a feature of the device. The current of the body of water (ignoring for the moment that standing bodies of water such as lakes and ponds have no current, rather rivers do) is also not a feature of the device, and is in no way suited to orient the evaporation surface in a direction which is parallel to the wind direction. With regard to tethering the boat to a dock as an orientation means, Applicants respectfully submit that a tether between a boat and a dock or pier cannot be used as an orientation means. In any event, this structure is not an equivalent of any structure described in the specification for orientation.

Turning attention to paragraph 3 of the Office Action, Applicants respectfully do not understand the Examiner's objection to the immersion means, specifically that "the evaporation device floats on top of a pond." This objection would be well understood for a device which does not float. However, a floating device which has to periodically submerge below the water line requires an immersion means or its equivalent.

Applicants respectfully point out to the Examiner that the "immersing means" are directed toward immersing the evaporation *surface* in the body of liquid, and not the evaporation *device*, as indicated in the Office Action. Furthermore, the ballast chamber does not include wetting means as indicated, rather the wetting means (amended to read "immersing means") include a ballast chamber (please refer to the language of Claim 4).

With regard to the objection concerning the lack of constructive connection, Applicants respectfully point out that Claim 4 teaches a ballast chamber means being part of an immersion

means, being part of a wetting means, which is part of the claimed device.

With regard to the objection to the term “kit” in Claim 32, Applicants respectfully point out that the kit is not the evaporation device rather it comprises at least one of the evaporation devices which is defined in Claim 1, with addition of at least one positioning means. This is distinct from the device defined in Claim 1.

With regard to the rejection in paragraph 4 of the Office Action, concerning the lack of structural cooperative relationships, in connection with which the Examiner refers to MPEP § 2172.01, Applicants respectfully submit that the claim amendments obviate the rejection. Applicants also respectfully submit that the Examiner’s interpretation of this section of the MPEP is flawed. This section states:

A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may be rejected under 35 USC 112, first paragraph, as not enabling. In re Mayhew, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). See also MPEP § 2164.08(c). Such essential matter may include missing elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary to practice the invention. [Emphasis added]

While the device *as claimed* may still have additional structural cooperative

relationships of elements, the applicants did not indicate that any of these relationships were necessary to practice the invention (e.g., the evaporation element may be attached to the device in any desired way, etc.).

In view of the above, it is respectfully submitted that all of the 35 USC 112 rejections of record have been overcome and should be withdrawn.

The claims stand rejected under 35 USC 102(b) or (e) as allegedly being anticipated by the references cited at paragraphs 6-9 of the Official Action and/or under 35 USC 103(a) as allegedly being unpatentable over the combination of references cited at paragraph 10 of the Official Action. Applicants respectfully traverse these rejections.

As discussed at the interview, none of the cited references shows or suggests the claimed **orientation means for orienting the evaporation surface means in a direction at least approximately parallel to the wind direction**. In the absence of anything in the cited art which would show or suggest an element that performs the function specified in the claim, it is respectfully submitted that the cited art cannot be used to set forth even a *prima facie* case of anticipation or obviousness for the invention as claimed (see MPEP Section 2183).

In this respect, Applicants respectfully note that, besides lacking the claimed means, the Assaf reference goes to great lengths to teach that the evaporation surfaces of the invention described therein are advantageously placed **perpendicular** to the direction of the prevailing

winds and indeed such orientation would appear to be needed to the Assaf device to work in accordance with the principle of operation described therein (see Assaf at, for example column 4, line 46 to column, 7, line 66, and column 13, lines 40-61). Accordingly, and since a proposed modification cannot change the principal of operation of a reference (see MPEP 2143.01), the Assaf reference, either alone or in combination with Kemper, cannot be considered to anticipate or to render obvious the invention as defined by the amended claims.

With specific respect to GB 2330779 and Takayasu, Applicants respectfully note that these references also do not show or suggest an evaporation device as claimed, which is “**free of any external enclosure** surrounding the evaporation element and preventing its exposure to said outdoor environment”. The British reference teaches an enclosed evaporator, and it is clear from the ‘779 description that the enclosure is a necessary component thereof (see, for example, page 3, lines 4-9, and page 7, lines 1-14). Accordingly, it is respectfully submitted that the British patent teaches away from the claimed invention. Similarly, the Takayasu reference consistently refers to an enclosure formed by a roof and sidewalls (see, for example, column 8, lines 60-63), and also teaches away from the claimed invention for this reason.

In view of the above, it is respectfully submitted that all rejections and objections have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Clifford J. Mass', is written over a horizontal line.

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